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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,738	08/13/2003	Bobby J. Johnson	1506.01	1737
21901	7590	11/13/2003	EXAMINER	
SMITH & HOPEN PA 15950 BAY VISTA DRIVE SUITE 220 CLEARWATER, FL 33760			ESTRADA, ANGEL R	
			ART UNIT	PAPER NUMBER
			2831	

DATE MAILED: 11/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/604,738	JOHNSON, BOBBY J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Angel R. Estrada	2831	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2 and 6 is/are rejected.
- 7) Claim(s) 3-5 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 13 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because Figures 1 and 2 seem like a completely different invention; it is difficult to relate figures 1 and 2 with figures 3-7. Examiner believes that these Figures (1 and 2) should be deleted. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
  
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 30(a), 30(b), 30(c), 30 (d). A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

3. Claim 1 is objected to because of the following informalities:  
  
Claim 1 lines 1, 5, 13 and 16, "adapted to" is not a positive limitation. It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re. Hutchison*, 69 USPQ 138.

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheehan (US 3,809,798) in view of Beinhauer et al (US 4,431,198, hereinafter Beinhauer).

Regarding claim 1, Sheehan discloses a device (10) that covers a throughbore (see figure 2) and that is adapted to receive a conduit (35), comprising: a hollow housing (see figure 1) having a closed top, a closed back, a pair of side walls formed integrally with said closed top and said closed back (see figure 1), an open bottom (see figure 1), and an open front (see figure 1) adapted to abut against an exterior surface of a wall having said throughbore formed therein (see figure 2); fastening means (14) for securing said hollow housing to said exterior surface of said wall so that said open front of said hollow housing abuts said exterior surface of said wall (see figure 2); said closed top, closed back, and said pair of side walls collectively forming a hollow interior when said open front of said hollow housing is disposed in abutting relation to said exterior surface of said wall (see figure 2); said hollow interior adapted to accommodate a free end of said conduit (35); said conduit (35) having a lumen adapted to accommodate at least one elongate member (see figure 1); but Sheehan lacks a port formed in said closed top adapted to receive a sealant that at least partially fills said hollow housing to

seal said throughbore. Beinhauer teaches a device (18, 20) that cover a thoughbore (see figure 3) having a closed top (18) with a port (24) formed in said closed top (see figure 1), said port (24) adapted to receive a sealant that at least partially fills said hollow housing to seal said throughbore (see figures 4 and 5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Sheenan's closed top with a port to receive a sealant to seal said through hole as taught by Beinhauer to provide means to would completely seal the throughbore and provide protection against the ingress of water, moisture, contaminant and/or gases.

Regarding claim 6, Sheenan discloses the device ~~further comprising said conduit~~ *DA 11/3103* (35) having an upper end press fit into said hollow housing (see figure 3).

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sheehan (US 3,809,798) in view of Beinhauer et al (US 4,431,198, hereinafter Beinhauer) as applied in claim 1, and further in view of Moore et al (US 4,656,313, hereinafter Moore).

Regarding claim 2, the modified Sheenan discloses the claimed invention except for a cap for closing said port. Moore teaches a device (10) that covers a throughbore having a hollow housing (see figure 3) with a cap (51) for closing a port (48); said cap (51) being removed from said port (48) when said sealant is introduced into said hollow housing (see figure 2); said cap (51) being placed in closing relation to said port (48) after said sealant has been introduced into said hollow housing (see figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made

to provide to the modified Sheenan's device with a cap for closing said port as taught by Moore to provide means that close the port after the sealing material has been inserted

***Allowable Subject Matter***

6. Claims 3-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance: The primary reason for the indication of the allowability of claims 3-5 is:

Regarding claims 3-5 is the inclusion therein in combination as currently claimed of the limitation of said fastening means further comprising: a first flange formed integrally with a first side wall of said pair of side walls; said first flange positioned in normal relation to a first side wall and in overlying relation to said exterior surface of said wall when said open front of said main body is disposed in abutting relation to said exterior surface of said wall; a second flange formed integrally with a second side wall of said pair of side walls; said second flange positioned in normal relation to said second side wall and in overlying relation to said exterior surface of said wall when said open front of said main body is disposed in abutting relation to said exterior surface of said wall; a screw-receiving aperture formed in said first flange; and a screw-receiving aperture formed in said second flange.

This limitation is found in claims 3-5, and is neither disclosed nor taught by the prior art of record, alone or in combination.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Harshman et al (US 5,051,747), Simon (US 3,809,798), Helmsdorfer et al (US 4,688,747), Lofving (US 4,797,507), Bing (US 6,580,029), Eccles (US 1,914,011) and Leach (US 5,403,974) disclose a device that covers a throughbore and that is adapted to receive a conduit.

8. Any inquiry concerning this communication should be directed to Angel R. Estrada at telephone number (703) 305-0853. The Examiner can normally be reached on Monday-Friday (8:30 -5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard can be reached on (703) 308-3682. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

AE

October 27, 2003

*Dean A. Reichard 11/3/03*  
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